

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 30

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MAXIMILIAN P. ZAHER

Appeal No. 96-2061
Application 08/152,080¹

ON BRIEF

Before KIMLIN, GARRIS, and PAK, Administrative Patent Judges.
GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection
of claims 12 through 18 which are all of the claims remaining

¹ Application for patent filed November 9, 1993.
According to appellant, this application is a continuation of
Application 07/777,295, filed December 6, 1991.

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in the application.

The subject matter on appeal relates to a method of creating a decorative design by applying multicolored dyestuffs on and incorporating them in a substrate which comprises the steps of placing a carrier with multicolored dyestuffs on a substrate and transferring the dyestuffs from the carrier to the substrate by heating the carrier with infrared radiation, wherein the intensity of the infrared radiation applied to the carrier is controlled in correspondence with the prevalent color portions of the multicolored dyestuffs to which the infrared radiation is applied, the intensity of the infrared radiation applied to the carrier being different for each color of said multicolored dyestuffs carried thereby, said infrared radiation thereby being directed inhomogeneously to the carrier depending on the color distribution of the decorative design. We refer to representative independent claim 12 of record for further details of this appealed subject matter.

The references relied upon by the examiner as evidence of obviousness are:

Vertegaal

4,060,382

Nov. 29, 1977

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Arai	4,399,749	Aug. 23, 1983
Haigh et al. (Haigh)	4,465,728	Aug. 14, 1984
Kawasaki et al. (Kawasaki)	4,555,427	Nov. 26, 1985
Fukui	4,820,310	Apr. 11, 1989
Fuchs (Germany) (translation copy attached)	3,904,424	Jan. 18, 1990

Claims 12 through 15 stand rejected under 35 U.S.C. § 103 as being unpatentable over Fuchs in view of Haigh and Arai. Claims 16 through 18 stand correspondingly rejected over these references in various combinations with the other above listed references relied upon by the examiner.

We refer to the brief and to the answer for a complete exposition of the opposing viewpoints expressed by the appellant and the examiner concerning the above noted rejections.

OPINION

We will not sustain any of the rejections advanced by the examiner on this appeal.

We are in substantial agreement with the basic position advocated by the appellant that the applied references in

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general and Arai in particular contain no teaching or suggestion of modifying the method of Fuchs whereby the intensity of the infrared radiation is controlled in the manner required by independent claim 12.

According to the examiner, "[i]t would have been obvious to one having ordinary skill in the art to have applied different amounts of infrared radiation to the different colors in the design [of the Fuchs method] to compensate for the different print characteristics of different colored dyes because Arai teaches that is known to vary the time duration of the heat applied as a function of the dye color to compensate for the different print characteristics of different colors" (office action mailed June 21, 1994 (Paper No. 17), page 4). From our perspective, however, the examiner's obviousness conclusion is not adequately supported by the Arai reference.

While the examiner is correct that Arai teaches varying the time duration of heat application, this teaching alone would not have suggested modifying Fuchs' step of applying infrared radiation by controlling the intensity of the

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infrared radiation as recited in appealed claim 12. Simply stated, this is because the Arai teaching is limited to varying the time duration of heat application rather than controlling the intensity of any kind of application much less the intensity of infrared radiation application as required by the independent claim on appeal.

For the above stated reasons, we can not sustain any of the section 103 rejections advanced by the examiner on this appeal.

The decision of the examiner is reversed.

REVERSED

	Edward C. Kimlin)	
	Administrative Patent Judge)	
)	
)	
)	
	Bradley R. Garriss)	BOARD OF
PATENT	Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	

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Chung K. Pak)
Administrative Patent Judge)

tdc

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